

LILLIAN LABAUVE LINNEY

MAY 6 (legislative day, APRIL 30), 1942.—Ordered to be printed

Mr. HUGHES, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 2317]

The Committee on Claims, to whom was referred the bill (S. 2317) for the relief of Lillian LaBauve Linney, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The bill provides for the payment of \$5,000 to Lillian La Bauve Linney, widow of Fred C. Linney, deceased, in full settlement of all claims against the United States for the death of her husband, who died September 19, 1941, as a result of injuries sustained on September 17, 1941, when the car in which he was riding was struck by an Army truck at the intersection of College Avenue and Johnson Street, in the parish of Lafayette, State of Louisiana.

The War Department has no objection to the bill.

The evidence shows that on September 17, 1941, at about 8 p. m., an Army truck on official business, operated by an enlisted man, with several other enlisted men as passengers, was proceeding west on College Avenue, Lafayette, La., and approaching the intersection of College Avenue and Johnson Street, at a speed stated by the Government driver and a soldier who was riding on the front seat with him as 15 miles per hour and estimated by two disinterested eyewitnesses at about 35 miles per hour. The night was clear and dark, and the street, divided by a black center line, was paved and dry. The signal light at the intersection was green for traffic on College Avenue. At the same time a Ford coupe, owned by Oil Field Maintenance Co., Inc., New Iberia, La., and operated by Fred C. Linney, manager of said company, was proceeding in the opposite direction on College Avenue at a speed estimated at from 30 to 40 miles per hour. It appears that upon reaching the intersection the Army driver, with a view to making a left turn into Johnson Street, swung his vehicle sharply to the left and directly into the path of the oncoming Ford coupe of Mr. Linney. The two vehicles collided.

As a result of the accident, the Army truck received minor damages; the Ford coupe was practically demolished; and Mr. Linney suffered a depressed fracture, left temporal frontal area, shock, possible internal injuries, laceration of left temple and chin, and generalized contusions and abrasions, from which injuries he died about 2 days later. At the time of his death Mr. Linney was 33 years of age. He is survived by his widow, Lillian LaBauve Linney, age 29 years, who is his sole dependent and beneficiary.

The Government driver testified that he did not see or hear the private vehicle until the accident had actually occurred, and the soldier who was riding with him on the front seat testified that he did not see the other vehicle approaching until just a few seconds before the collision. An eyewitness to the accident testified that the driver of the Government truck turned directly across the path of the oncoming civilian car; and that the civilian driver, apparently, applied his brakes and swerved to the right but was hit almost as soon as he applied his brakes. A city of Lafayette police officer who went to the scene shortly after the accident had occurred, stated that it appeared that the accident was caused by the Army truck making a sharp left turn toward Johnson Street into the path of the Ford coupe; and that, from the position of the Army truck after the accident, the left turn was so short that he believed the driver would have turned into the curb on the south side of College Avenue had he not collided with the Ford.

In reporting on the merits of the claim the Secretary of War states:

After careful consideration of the evidence adduced in this case, it is the view of the War Department that the preponderance thereof tends to establish that the proximate cause of the accident was negligence on the part of the Government driver, in that he attempted a left turn in the face of oncoming traffic without first ascertaining that such movement could be safely completed.

Additional facts will be found in the following communications, which are appended hereto and made a part of this report.

WAR DEPARTMENT,
Washington, Mar. 26, 1942.

HON. PRENTISS M. BROWN,
Chairman, Committee on Claims, United States Senate.

DEAR SENATOR BROWN: The War Department will interpose no objection to the enactment of S. 2317, Seventy-seventh Congress, second session, a bill which would compensate Lillian LaBauve Linney, widow of Fred C. Linney, deceased, in full settlement of all claims against the United States for the death of her husband, the said Fred C. Linney, who died on September 19, 1941, as a result of injuries sustained on September 17, 1941, when the car in which he was riding was in collision with an Army truck at the intersection of College Avenue and Johnson Street in the parish of Lafayette, State of Louisiana.

On September 17, 1941, at about 8 p. m., an Army truck on official business, operated by an enlisted man, with several other enlisted men as passengers, was proceeding west on College Avenue, Lafayette, La., and approaching the intersection of College Avenue and Johnson Street, at a speed stated by the Government driver and a soldier who was riding on the front seat with him as 15 miles per hour and estimated by two disinterested eyewitnesses at about 35 miles per hour. The night was clear and dark, and the street, divided by a black center line, was paved and dry. The signal light at the intersection was green for traffic on College Avenue. At the same time a Ford coupe, owned by Oil Field Maintenance Co., Inc., New Iberia, La., and operated by Fred C. Linney, 1110 North Main Street, New Iberia, manager of said company, was proceeding in the opposite direction on College Avenue at a speed estimated at from 30 to 40 miles per hour. It appears that upon reaching the intersection the Army driver, with a

view to making a left turn into Johnson Street, swung his vehicle sharply to the left and directly into the path of the oncoming Ford coupe of Mr. Linney. The two vehicles collided.

As a result of the accident, the Army truck received minor damages; the Ford coupe was practically demolished; and Mr. Linney suffered a depressed fracture, left temporal frontal area, shock, possible internal injuries, laceration of left temple and chin, and generalized contusions and abrasions, from which injuries he died about 2 days later.

The Government driver testified that he did not see or hear the private vehicle until the accident had actually occurred, and the soldier who was riding with him on the front seat testified that he did not see the other vehicle approaching until just a few seconds before the collision. An eyewitness to the accident testified that the driver of the Government truck turned directly across the path of the oncoming civilian car; and that the civilian driver, apparently, applied his brakes and swerved to the right but was hit almost as soon as he applied his brakes. A city of Lafayette police officer who went to the scene shortly after the accident had occurred, stated that it appeared that the accident was caused by the Army truck making a sharp left turn toward Johnson Street into the path of the Ford coupe; and that, from the position of the Army truck after the accident, the left turn was so short that he believed the driver would have turned into the curb on the south side of College Avenue had he not collided with the Ford.

No claim has been filed with the War Department growing out of this accident.

The following expenses are of record in the Department incident to the injuries suffered by Mr. Linney:

Hospital bill	\$94
Bill of Dr. Clarence J. Saloom	100
Telegrams and telephone calls	25
Bill of Dr. Gilbert C. Anderson, New Orleans, for airplane trip to Lafayette, examination and consultation with Dr. Saloom and staff, and bilateral craniotomy	1, 500
	<hr/> 1, 719

It is of further record in the Department that the Ford coupe was purchased new on August 9, 1941, for the price of \$874; that it was covered by a \$50-deductible insurance policy; that settlement was made by the insurance company in an amount of \$603; that the salvage value of the car was approximately \$100; and that these amounts were used to clear all indebtedness on the car.

There is no information of record in the Department as to the age of Mr. Linney at time of death, or as to the names, ages, and extent of dependency of any persons who would be beneficiaries of a payment to his estate. When such information is received, it will be transmitted to the committee.

After careful consideration of the evidence adduced in this case, it is the view of the War Department that the preponderance thereof tends to establish that the proximate cause of the accident was negligence on the part of the Government driver, in that he attempted a left turn in the face of oncoming traffic without first ascertaining that such a movement could be safely completed. Therefore, since it appears that Mr. Linney came to his death through no fault or negligence on his part, but rather through the negligence of the Government driver, the Department, while not prepared to pass on the amount that should be allowed to Mrs. Linney, will interpose no objection to the enactment of legislation compensating her in such amount as the Congress in its discretion may deem proper.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

WAR DEPARTMENT,
Washington, April 7, 1942.

Hon. PRENTISS M. BROWN,
*Chairman, Committee on Claims,
United States Senate.*

DEAR SENATOR BROWN: In War Department letter of March 26, 1942, reporting on S. 2317, Seventy-seventh Congress, a bill for the relief of Lillian LaBauve Linney, it was stated that information as to the age of Mr. Linney at the time of his death and as to the ages and extent of dependency of any survivors of the

deceased would be furnished to the committee when obtained. Information in this connection is now available as follows:

At the time of his death, Fred C. Linney was 33 years of age.

He is survived by his widow, Lillian LaBauve Linney, age 29 years, who is his sole dependent and beneficiary.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

NEW IBERIA, LA.,
December 9, 1941.

To Whom It May Concern:

I attended Mr. Fred Linney in his last illness. When first seen Mr. Linney had been in an auto accident several hours before and was suffering a depressed compound fracture of the left fronto-temporal region and a contre coup fracture of the right parietal region.

Mr. Linney expired as a direct result of the injuries received in this accident on September 19, 1941.

There were no other factors which predisposed to his death or might have retarded his recovery.

ORIEN E. DALTON, M. D.

NEW IBERIA, LA., February 7, 1942.

MR. LAWRENCE P. SIMON,
Attorney at Law, New Iberia, La.

DEAR SIR: This is to certify that Mr. Fred C. Linney was employed by this company from December 5, 1940, to June 21, 1941, at a salary of \$38.70 per week straight time.

Yours very truly,

WILLIAM HELIS,
By CARTER KEITH,
Field Clerk.

STATE OF LOUISIANA,
Parish of Iberia.

Personally came and appeared before me, James L. Helm, a notary public duly commissioned and qualified in and for the Parish of Iberia, State of Louisiana, Lilyan LaBauve Linney, who, being first duly sworn according to law, did depose and say:

That she was married but once, and then to Fred C. Linney, on the 8th day of April 1937, in the parish of Calcasieu, State of Louisiana. That on the 17th day of September 1941, her said husband received severe personal injuries, when a motortruck belonging to the United States Army and being driven by a member of the United States Army, cut over to its left side of the highway, in the city of Lafayette, La., and ran into the automobile being driven by her said husband. That as a result of the injuries received from this collision her said husband died on the 19th day of September, 1941. That at the time of his death he was 32 years 11 months and 24 days of age.

That there were no children born of the marriage between affiant and her said deceased husband. That she is 29 years of age and has no means of support whatsoever, and is not employed in any gainful occupation.

That as a result of the injuries sustained by her said husband, and his death resulting therefrom petitioner incurred the following bills and expenses:

Dr. Orien E. Dalton, New Iberia, La.....	\$80. 00
Evangeline Funeral Home, New Iberia, La.....	265. 00
Dr. Gilbert C. Anderson, 3431 Prytania St., New Orleans, La., bill submitted for professional services rendered to the late Fred C. Linney.....	1, 500. 00
Dr. Saloom's Clinic, Lafayette, La.....	235. 00
Nurses.....	27. 50
Rev. R. R. Diggs, funeral service.....	10. 00
Total.....	2, 117. 50

That as a result of the death of her said husband affiant has sustained damages, aside from the expenses above listed, in the sum of \$10,000, in view of the loss of support occasioned by the death of her husband, and the physical and mental shock, grief, and anguish occasioned thereby.

LILLYAN LABAUVE LINNEY.

Sworn to and subscribed in duplicate originals before me this 30th day of December 1941.

[SEAL]

JAMES L. HELM, *Notary Public.*

STATE OF LOUISIANA,
Parish of Lafayette.

Before me, the undersigned notary public, duly commissioned and qualified, in and for the parish of Lafayette, State of Louisiana, personally came and appeared Eric E. Guilbeau, Jr., who being duly sworn did depose and say:

I am a licensed and practicing physician and surgeon in the State of Louisiana, having graduated from Tulane University in 1936. I am 30 years old, being born on April 12, 1911, am married and have one child. My residence is 1014 Johnson Street, Lafayette, La.

On Wednesday, September 17, 1941, at about 8:30 p. m., Mr. Henry Heymann and his wife, and my wife and I, were riding in Mr. Heymann's car. Mr. Heymann was driving and I was sitting on the front seat with him. We were headed toward Abbeville, La., on Johnson Street and were stopped for the red light at the intersection of West College Avenue and Johnson Street. We could hear a large automobile coming down College Avenue, headed west, and remarked that it was making considerable noise and that the speed must have been great for that large a car. As that car neared the intersection, we noted that it was a large Army truck, which, at the time, must have been slowing up—the gears were screaming. As it neared the intersection it must still have been coasting at 35 miles an hour. At that time, we noted another car coming down College Avenue toward the intersection, headed east, which car was not slowing up, but driving with a steady speed of about 35 miles an hour. Both cars had their headlights on. The Army truck was slightly to the right side of the road, going west, as they neared the intersection, but the car headed east was well on its right side. As they reached the intersection, the car headed east was approximately half-way across the intersection of Johnson Street, crossing a green light, when the Army truck curved across College Avenue, toward the southeast corner of College Avenue, in the direction of Abbeville.

This brought the truck directly in front of the car heading east, which car swerved slightly to the southeast apparently attempting to apply his brakes, and was hit almost simultaneously by the truck. The truck struck the front left fender, wheel, and door of the car. The truck was at about a 45° angle when it hit the car. The impact stopped both cars. Mr. Heymann and I immediately got out, and were the first to reach the scene of the accident. We found the driver of the car unconscious, bleeding from the forehead, pulseless, shocked, slumped over the wheel in a sitting position. We were unable to open the door on the left side, and were unable to extricate him from the right side of the car, because he was wedged between the steering wheel, the seat, and the left door. Securing some help from several men of the crowd, that by now had congregated, we forced the left door open, straightened out the unconscious driver, and got him out on the left side. We stretched him out on the roadside, near the car, could feel no pulse, observed no respiration, and noted a deep cut on the left forehead. After lying there a few seconds, the driver began to gasp slightly and we carried him to the sidewalk, on the corner of College Avenue and Johnson Street. About that time, an ambulance arrived, and the unconscious man was taken to the hospital (Dr. Saloom's Clinic).

While we were waiting for the red light, the two cars involved in the accident and Mr. Heymann's car were the only three cars in the immediate vicinity of the intersection. There were no other cars around and I know of no other eyewitnesses to the accident besides ourselves. I am of the opinion that the driver of the car headed East was alone in his car, and I do not know how many soldiers were in the Army truck.

The Army truck was definitely at fault, and was the sole cause of the accident. The truck cut the southeast corner of the intersection of College Avenue and Johnson Street and turned right into the car headed east as if the car was not coming and was not there at all. As I have said before, the car was half-way across the intersection of Johnson Street. I do not know how far, exactly, the

truck was from the intersection of Johnson Street when it started to cut the south-east corner of the intersection. Both the car and the truck had their lights on, but I don't remember that either one had bright lights on. I am sure that the Army truck did not have bright lights on, as we were watching it turn onto the other car, and could see it coming from the distance, as we had heard it way off. There is a small stand on the northeast corner of the intersection, a short distance from the corner, but we could see both cars easily. The Army truck just swerved or curved the corner, and did not make a right angle turn. The truck and the car were about the length of the truck away from the steps of S. L. I., on the south-eastern corner of the intersection. Before either of the cars were moved, flashlight pictures were taken by the Army. It was a bright and clear night. It was not dark and there was no fog. It was not drizzling and there had been no rain that day. The roadways were dry.

The car headed east could not in any way have avoided the accident. However, he did make every effort to avoid being hit by the truck. He made this slight turn to his right, and if he would have made a greater turn, he would have run into the steps on the corner and then the Army truck would have hit him in the rear. Anyway, the Army truck had no business being where it was. Moreover, it would have just blocked the driveway or roadway of the car headed east. The Army truck was absolutely at fault.

ERIC E. GUILBEAU, Jr., M. D.

Sworn to and subscribed before me on this 18th day of November 1941, at my office in the city of Lafayette, parish of Lafayette, State of Louisiana, in triplicate originals.

[SEAL]

C. M. HORTON, Jr.,
Notary Public.

STATE OF LOUISIANA,
Parish of Lafayette.

Before me, the undersigned notary public, duly commissioned in and for the parish of Lafayette, State of Louisiana, personally came and appeared Henry Heymann, who being duly sworn, did depose and say:

I am regional manager for Heymann Store, with its business residence in Lafayette, La. My residence is 422 Buchanan Street, Lafayette, La. I am 41 years of age, having been born on March 11, 1900, am married and have one child.

On Wednesday, September 17, 1941, at about 8:30 p. m., my wife and I were riding with Dr. and Mrs. Eric E. Guilbeau, Jr., on Johnson Street. I was driving my car, and Dr. Guilbeau was seated in front with me. We were stopped by a red light at the intersection of Johnson Street and College Avenue, and while parked we heard a loud, rumbling noise, which attracted our attention. Glancing in the direction of the sound, we noticed it to be an Army truck proceeding West, which said truck was traveling at about 30 miles an hour. My assumption of the speed of the vehicle was based on the loud hum, the friction of the tires, and the motion of the vehicle. The passenger car was going east, on the right-hand side of the road, at about 30 miles an hour. The lights on both vehicles were burning. The traffic light was green, allowing both vehicles to proceed. When the Army truck was within ten or 15 feet of the light, it made a left-hand turn, without stopping. The oncoming passenger car ran into the truck. Both cars were in motion at the time of the accident.

I believe that the Army truck was at fault. The car headed east could not in any way have avoided the accident, because the Army truck made such a sudden turn to the left, going in the direction of Abbeville, La. The passenger car going east was beyond the traffic light, when the accident occurred; and the traffic light is just about the middle of the intersection. It was a bright night, and the visibility was good, and the pavement dry.

HENRY HEYMANN.

Sworn to and subscribed before me on this 18th day of November 1941, at my office in the city of Lafayette, parish of Lafayette, State of Louisiana, in triplicate originals.

C. M. HORTON, Jr.
Notary Public.

My name is P. J. Witkovski. I have been a member of the Lafayette police force for about 3½ years and was on duty on Wednesday, September 11, about 8:30 p. m. I saw an ambulance pass the station and so I called the funeral home, and found that an accident had occurred on the corner of College and Johnson Streets in the city of Lafayette. I got in my car, together with one of the military police then stationed in Lafayette, and we immediately went to the scene of the accident. We arrived there some 8 or 10 minutes following the accident. At that time there were quite a number of people around.

Johnson Street runs north and south, while College runs east and west. There is a stop light at the corner, which was working when I got there.

There was an Army truck stopped at about a 45° angle on the south side of College Avenue, facing southwest. It completely blocked the south travel lane of College Avenue, which is the right hand, or correct travel lane, for a car heading east on College Avenue, and the left-hand, or wrong lane for a car headed west as the Army truck was. The right rear wheel of the Army truck was about 1 foot over the south side of the black center line of College Avenue, while the right front wheel was from 4 to 5 feet on the south side of this line. The front of the Army truck was headed toward the southeast corner of the intersection and was just about at the eastern entrance of the intersection of College with Johnson Street.

The Linney car was right in the intersection of College and Johnson Streets, on the right hand side of College Avenue facing east. This is the correct lane of travel for a car going east on College Avenue. The car had bounced a couple of feet back from the Army truck and the front end was almost at the eastern entrance of College with Johnson Street. The rear was just over the black line in the center of Johnson Street, and the entire car was a foot or two over in its own travel lane. In other words, the Linney car had almost completed the crossing of Johnson Street when the collision took place.

The front end of the Linney car was smashed in, and the right front fender and bumper of the Army truck were smashed.

There were skid marks about 4 or 5 feet long behind the Linney car on the right-hand side of College, and on the western side of Johnson Street. There was no evidence on the pavement to indicate that the Army truck had attempted to apply its brakes.

When I got there Mr. Linney had already been removed from his car. The night was dry and clear.

I took the names of witnesses who saw the accident.

This is all I know of my own knowledge. However, from this observation, and what I was told by eyewitnesses, it seemed evident that the Army truck had cut directly in front of Mr. Linney's line of travel, in an attempt to cut the corner for a left-hand turn into Johnson Street, and that Mr. Linney just had time to slap on his brakes before the collision occurred, while the driver of the Army truck did nothing to avoid the accident, but, on the contrary, his action seemed the sole cause thereof.

PAUL J. WITKOVSKI.

Sworn to and subscribed before me this 5th day of February A. D. 1942.

[SEAL]

C. M. HORTON, JR., *Notary Public.*



